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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,118	10/27/2000	Duane Girard Uitenbroek	KCC-14,607	6282

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WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
1764	2

DATE MAILED: 02/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Application No.</b> 09/698,118  <b>Examiner</b> Alexis Wachtel	<b>Applicant(s)</b> UITENBROEK ET AL.  <b>Art Unit</b> 1771/764
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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### **Status**

1) Responsive to communication(s) filed on 1-13-2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

4) Claim(s) 22,26-37 and 39 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 22,26-37 and 39 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### **Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

***Detailed Action***

***Response to Amendment***

1. Applicant's amendment and accompanying Remarks filed 1-13-2003 have been entered and carefully considered.

The amendment is sufficient to overcome the obviousness rejections of claims 1-10,14-23,26-37 and 39 and the 112 1st paragraph rejections of claims 1-10 and 14-21. The previously applied prior art fails to teach a spunbond nonwoven web creped in the machine direction. Claims 1-10,14-21 and 23 are cancelled without prejudice. An updated search yielded new prior art that provides a new basis of rejection as shown below. Applicant's arguments are rendered moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22 and 26-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon 028' in view of Mormon 781' and US 6,129,801 to Benson et al.

The method limitation of claim 28, wherein the film and web are bonded together via a co-extrusion coating process is given patentable weight in so far as the effects the claimed steps have on the structure and/or chemistry of the final product. It is believed

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the claimed process will be identical to a web thermally or ultrasonically bonded to the film as taught in the cited art discussed below.

(Morman '028) is directed to breathable elastic laminates and teaches a stretchable spunbonded nonwoven web bonded to an elastic film, either thermally, ultrasonically, or with an adhesive when the web is in an elongated "necked" in condition. Bonding of the unstretched elastic film to a necked in nonwoven web provides a breathable laminate which is stretchable in a direction parallel to the direction of the narrowing or necking of the web before lamination, and which partially or fully recovers when the stretching force is removed (Col 2, lines 6-18). The nonwoven web can be necked by other means, examples of which include but are not limited to tenter frames or other cross machine direction stretcher arrangements that render a web elastic in the machine direction (Col 8, lines 27-35). Examiner notes that (Morman '028) defines elastic as "any material which upon application of a biasing force is stretchable, that is, elongatable, to a stretched, biased length which is at least about 160 percent of its relaxed unbiased length, and which will recover at least 55 percent of its elongation upon release of the stretching, elongating force (Col 2, lines 58-67). Said film can be made from any suitable film-forming elastic polymer that exhibits an ability to absorb and diffuse water vapor such as polyurethanes, polyester ethers and polyether amides (Col 2, lines 1-5). Said breathable elastic film or sheet includes a water vapor soluble polymer (Col 6, lines 4-6). The breathable elastic film or sheet should have a moisture vapor transmission (MVTR) rate of at least 2000 grams/m<sup>2</sup>-24 hours (Col 6, lines 13-18). With regards to claim 36, the breathable elastic laminate is useful as an outer cover

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for disposable diapers and other personal care products. The laminate is also useful for breathable surgical gowns and other breathable applications (Col 1, lines 5-10).

Regarding claim 22, (Morman '028) as set forth above fails to teach that the breathable elastic laminate is biaxially stretchable. (Morman '781) is directed to multi-directional stretch composites and teaches a composite elastic material that can stretch in at least two directions (Col 4, lines 35-40). Such a composite is useful in products such as diapers, tissues, wipes garments, mattress pads and feminine care products. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have manufactured the breathable elastic laminate of (Morman '028) such that said laminate has biaxial stretch properties motivated by the desire to improve the tactile properties of said laminate (Morman '781, Col 1, lines 13-28 ).

With regards to claim 22, (Morman '028) as set forth above fails to teach that the spunbonded nonwoven web may be creped to achieve machine direction stretch. Benson et al teaches that neckable material can be necked via a process that crepes a web (Col 6, lines 24-42, Fig. 2). The neckable material can be necked in the MD or CD direction (Col 5, lines 25-35). Since crepeing affords stretch properties as well as softness to a nonwoven, it would have been obvious for one of ordinary skill to have used a crepeing process to neck the nonwoven of (Morman '028) motivated by the desire to impart stretch properties as well as desirable softness to a neckable web in a single step thus decreasing production costs.

It would also have been obvious for one of ordinary skill in the art to have creped the web prior to bonding it to the film motivated by the desire to prevent the crepeing

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process from damaging the film as would result if the web and film were already bonded together.

With regards to claims 29-35, although the claimed stretch ratios are not explicitly taught by (Morman '028), Moromon 781 or Kadolph et al, it is reasonable to presume that said limitations would be met by the combination of the three references. Support for said presumption is found in the use of similar materials (i.e. biaxially stretchable laminate made from a biaxially stretchable nonwoven spunbonded web and elastic water vapor permeable polymeric film) and in the similar production steps (i.e. bonding web to film) used to produce the breathable elastic laminate. The burden is upon the Applicant to prove otherwise.

4. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over (Morman '028) in view of (Morman '781) further in view of US 6,129,801 to Benson et al and US 5,554,143 to Roe et al.

(Morman '028) in view of (Morman '781) and Bensone et al as set forth above fails to teach prestretching the film used in the breathable elastic laminate prior to bonding it to the spunbonded nonwoven web.

Roe et al is directed to absorbent articles such as diapers, incontinent briefs having an extensible waist feature (Col 1, lines 10-15). Extensible back waist features preferably comprise a structural elastic-like film (SELF) web (Col 2, lines 54-59). It may be desirable for the (SELF) web to exhibit a certain degree of bulkiness. One method of providing this bulk includes forming a polymeric film, prestretching it and subsequently applying a nonwoven to one or both sides of said film while said film is in a prestretched

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state. Upon relaxation of the film's stretch, the nonwoven material forms puckers which give the material added bulk (Col 24, lines 38-48). In view of this teaching it would have been obvious for one of ordinary skill in the art at the time the invention was made to have prestretched the film as set forth above before applying to the spunbonded nonwoven web, motivated by the desire to impart bulk to the resulting laminate and thusly increase the cushioning capabilities of said laminate.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Terrel Morris, can be reached at (703) 308-2414. The fax phone numbers for the organization where this application or proceeding

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is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



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